

UNITED STATES DISTRICT COURT

District of New Jersey

Chambers of
William H. Walls
Senior District Judge

(973) 645-2564
(973) 645-3436 Fax

Martin Luther King Jr.
Federal Courthouse
50 Walnut Street
Newark, New Jersey 07102

NOT FOR PUBLICATION

LETTER ORDER

ORIGINAL ON FILE WITH CLERK OF COURT

April 28, 2010

Placido Benitez
Reg. No. 27904-050
FMC Devens
P.O. Box 879
Ayer, MA 01432

Anthony J. Mahajan
Office of the U.S. Attorney
970 Broad Street, 7th Floor
Newark, NJ 07102

Re: USA v. Benitez
Docket No. 08-cr-00421 (WHW)

Dear parties,

Placido Benitez (“movant”) has moved for a new trial under Federal Rule of Criminal Procedure 33(b)(1) on the basis of newly discovered evidence. Movant also asks that his guilty plea be withdrawn, making several arguments including the following: First, movant argues that he was discriminated against because protected classes were excluded from the grand jury pool. (Benitez Mot. for New Trial (“Benitez Mot.”) 1-2.) Second, movant had a history of mental illness and lacked capacity either to waive his Miranda rights or to enter a guilty plea. (Benitez Mot. 2.) Third, movant alleges ineffective assistance of counsel due to his counsel’s failure to

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object to the alleged discrimination, failure to emphasize movant's history of mental illness, and failure to file an appeal when movant requested one. (Benitez Mot. 2, 6.)

Movant's motion for a new trial is governed by Rule 33(a), which allows a court to "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). Section (b)(1) sets the time limitations for moving for a new trial, stating in part: "Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty." Where a Rule 33 motion is grounded on any rationale other than newly discovered evidence, it can be filed only within fourteen days of the verdict. Fed. R. Crim. P. 33(b)(2). By moving under Fed. R. Crim. P. 33(b)(1), movant avoids the more restrictive filing requirements of Fed. R. Crim. P. 33(b)(2). A Rule 33 motion on the basis of newly discovered evidence can be granted only where, among other things, "the evidence [is] in fact, newly discovered, i.e., discovered since the trial." U.S. v. Brown, 595 F.3d 498, 511 (3d Cir. 2010). Because movant has presented no new evidence to this Court, he is not entitled to relief under Rule 33.

Movant also seeks to withdraw his guilty plea under Federal Rule of Criminal Procedure 11(d). In accordance with this Rule, a defendant may withdraw his plea for any reason before the court accepts it, or after the court accepts it but before sentencing in certain circumstances. Fed. R. Crim. P. 11(d). However, "[a]fter the court imposes sentence, the defendant may not withdraw a plea of guilty . . . , and the plea may be set aside only on direct appeal or collateral attack." Fed. R. Crim. P. 11(e).

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Because movant was sentenced on January 22, 2009, he may not withdraw his plea under Rule 11. This motion is not a direct appeal, and movant has expressly stated that this motion and its accompanying brief should not be “construed as a § 2255 Motion” (Benitez Mot. 6), which is a mechanism that subjects the sentences of federal prisoners to collateral attack. 28 U.S.C. § 2255. Because movant cannot obtain relief under Rule 11, and because he is neither directly appealing nor pursuing collateral relief, his request to withdraw his guilty plea is denied.¹

CONCLUSION

For the foregoing reasons, it is on this 28th day of April, 2010,

ORDERED that Placido Benitez’s Motion for a New Trial is DENIED.

Yours truly,

s/ William H. Walls

United States Senior District Judge

cc: All Counsel of Record (via CM/ECF)
Placido Benitez (via USPS)

¹ If movant wishes to make a § 2255 motion, he may do so in accordance with the statute’s requirements. See 28 U.S.C. § 2255(f).